



TAMIL NADU

GOVERNMENT GAZETTE

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No. 169] CHENNAI, THURSDAY, APRIL 11, 2019
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Part V—Section 4

Notifications by the Election Commission of India

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA

JUDGEMENT OF THE HIGH COURT OF MADRAS
IN ELECTION PETITION NO.05 OF 2016.

No. SRO G-35/2019.

The following Notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001, dated 28th March, 2019 [7 Chetra, 1941 (Saka)] is published:—

No. 82/TN-LA(EP 05 of 2016)/2019:—In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order of the High Court of Madras, dated 19-03-2019 in Election Petition No.05 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 19TH DAY OF MARCH 2019

THE HON'BLE MR. JUSTICE K. RAVICHANDRABAABU

Election Petition No. 5 of 2016

and

O.A. No. 137 of 2019

ELP No. 05 of 2016

and

O.A. No. 137 of 2019

Dr. K. Krishnasamy, M.D.,
Founder-President,
Puthiya Tamilagam Party,
Candidate-217. Ottapidaram (SC) Assembly Constituency,
No. 2/34, V. Gangadar Street,
Nungambakkam,
Chennai-600 034—*Petitioner/Applicant.*

Versus

1. Sundararaj, R.,
S/o. S. Rajendran,
No. 9/37, Anna Salai,
Muppulivetti Village,
Ottapidaram Post and Taluk,
Thoothukudi District-628 401.
2. Arumuga Nainar, S.
S/o. K. Shanmugavel,
No. 3/71-11, Therku Street,
Muthaiahpuram,
Thoothukudi District-628 005.
3. Santhana Kumar, A.
S/o. Appavoo,
No. 5E/48, Muniasamy Nagar,
Thoothukudi District-628 005.
4. Muthukrishnan, T.,
S/o. Thangavelu,
No. 138, Kattudan Kadu (va.ki)
Mangalagiri, Block No. 2,
Thoothukudi District.

5. Murugaperumal, R.,
S/o. Ramaiah,
No. 3/61-A, North Street,
Akkanaiyakan Patti,
Ottapidaram Taluk,
Thoothukudi District.
6. Poovani Murugan, B.,
S/o. Balaiah,
No. 26-10E-1, Magizhchipuram,
Anna Nagar 12th West,
Thoothukudi District-628 008.
7. Jeyaraman,
S/o. Thekkan,
No. 37E, Andakondan Kudisai Area,
Anna Nagar, Thennur,
Trichy.
8. Murugan, G.,
S/o. Ganapathi,
No. 9/123A, Colony Street,
Muppulivetti,
Ottapidaram Post and Taluk,
Thoothukudi.
9. Balakrishnan, A.
S/o. M. Arumugam,
No. 9/144B, Colony Street,
Ottapidaram (Post and Taluk),
Thoothukudi.
10. Paulraj, M.,
S/o. Munusamy,
No. 3/104, West Street,
South Avarangadu,
Ottapidaram (Post and Taluk),
Thoothukudi District.
11. Perumal V.,
S/o. Vadviel,
Old No. 1-37A, New No. 1-62-1,
Dhalvaipuram,
Thoothukudi District.
12. The Returning Officer,
217-Ottapidaram (SC) Assembly Constituency,
Ottapidaram,
Thoothukudi District.

13. The District Election Officer/District Collector,
Thoothukudi,
Thoothukudi District—*Respondents/Respondents*.

****Respondents 12 & 13 Struck off from the Array of Respondents in
ELP. No.5 of 2016 as per common order dated 02-08-2017 made in
OA.Nos. 576 & 577/2017****

ELP No. 5 of 2016

Election Petition praying that this Hon'ble Court be pleased to (a) declare the Election of the returned candidate, namely the first respondent herein from No. 217 Ottapidaram (SC) Assembly Constituency (Tamil Nadu) in the election held on 16-05-2016. As which results have been declared on 19-5-2016 as null and void (b) Ordering scrutiny of all the Postal ballot papers including the declaration and order re-counting of all the Postal ballot Papers in comparises with the register maintained by the returning officer along with Form 12 received for such postal ballot papers (c) Declare the 1st respondent as disqualified from contesting the election as per Sec.9A of the representation of people Act, 1951. (d) Declare the petitioner as duly elected as a member of the Tamil Nadu Legislative Assembly from No. 217, Ottapidaram Assembly Constituency (Tamil Nadu) in the election held on 16-05-2016 (in which results have been declared on 19-05-2016). (e) Directing the 1st respondent to pay the costs of this election petitions.

O.A. No. 137 of 2019.

This Original Application praying that this Hon'ble Court be pleased to grant leave to withdraw the Election Petition with liberty and direct the Election Commission of India to hold the elections for the Ottapidaram Constituency for the Tamil Nadu Assembly in accordance with law to fill the vacancy.

This Original Applications and Election Petition coming on this day before this Court for hearing in the presence of Mr. J. Saravanel, advocate for the Election petitioner/Applicant herein and Mr. N.C. Ashok Kumar, advocate for the 1st respondent / 1st respondent herein and respondents 2 to 11 having been set ex-parte and upon reading the Petition, Judges Summon and affidavit of Dr. K. Krishnasamy, filed herein, and

This Court made the following order:-

This election petition is filed to declare the election of the Returned candidate viz., the first respondent herein from No. 217 Ottapidaram (SC) Assembly Constituency (Tamil Nadu) in the election held on 16-05-2016 as null and void and for other reliefs.

2. The election petitioner subsequently filed Original Application No. 137 of 2019 to grant leave to withdraw the above election petition with liberty and direction to the Election Commission to hold the election for the Ottapidaram Constituency for Tamil Nadu assembly to fill up the vacancy. The affidavit filed in support of the above application reads as follows:

"2. I State that the 1st respondent herein who is the successful candidate and whose election has been challenged in the above election petition has been disqualified from the membership of the Tamil Nadu Legislative Assembly by an order of the Speaker of the Assembly. The writ petition filed by the 1st respondent challenging the disqualification has been dismissed by this Hon'ble Court on 23-10-2018. To my knowledge the 1st respondent has not filed any appeal against the order of this Hon'ble Court confirming the disqualification of the 1st respondent from the membership of the Legislative Assembly. In such circumstances further proceedings in this Election Petition is rendered academic and the Election Commission of India, have to declare the constituency as vacant. The Election Commission has to take steps to fill the vacancy and such bye election should be held within a period of 6 months from the date of occurrence of vacancy as per Part IX and X of the Representation of people Act, 1951. Hence it is just and necessary that leave may be granted to withdraw the above election petition with liberty. This leave is sought purely on the above said grounds."

3. Section 109 of the Representation of People Act, 1951 deals with withdrawal of election petition and Section 110 of the said Act deals with procedure for withdrawal of the election petition, which read as follows:

"109. withdrawal of election petitions:-(1) *An election petition may be withdrawal only by leave of the High Court.*

(2) *Where an application for withdrawal is made under Sub-Section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Official Gazette.*

110. Procedure for withdrawal of election petitions:-(1) *If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.*

(2) *No application for withdrawal shall be granted if, in the opinion of the High Court, such application has been induced by any bargain or consideration which ought not to be allowed.*

(3) *If the application is granted-*

(a) *the petitioner shall be ordered to pay the costs of the respondents there to force incurred or such portion thereof as the High Court may think fit;*

(b) *the High Court shall direct that the notice of withdrawal shall be published in the Official Gazette and in such other manner as it may specify and thereupon the notice shall be published accordingly;*

(c) *a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the condition, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit"*

4. Perusal of the above said provisions would show that a person, who might himself have been a petitioner may, within 14 days of such gazette publication apply to be substituted as petitioner in place of the party withdrawing.

5. Thus, this Court by order dated 13-02-2019, directed the Registry to comply with the procedure contemplated under Section 109(2) of the Representation of the People Act, 1951 by fixing the date of hearing of the above application as 01-03-2019. On that day, it was informed by the Registry that gazette publication was made by fixing the date of hearing as 01-03-2019. Thus, this Court adjourned the matter for further hearing today. Today, the matter is taken up for further hearing. It is seen that no such application is filed by any person within 14 days from the date of publication of the gazette viz., 27-02-2019.

6. In view of the above stated facts and circumstances, Original Application No. 137 of 2019 is allowed and the election petitioner is granted permission to withdraw this election petition. Consequently, the election petition is dismissed as withdrawn. No costs.

7. Registry is directed to report the withdrawal of this election petition to the Election Commission, as required under Section 111 of the Act, forthwith.

WITNESS, THE HON'BLE SHRIMATI, VIJAYA KAMLESH TAHILRAMANI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 19TH DAY OF MARCH 2019.

Sd/-
*Assistant Registrar,
Original Side - I.*

CERTIFIED TO BE TRUE COPY
DATED THIS THE 21ST DAY OF MARCH 2019

Court Officer (OS)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

(By order)

MALAY MALLICK,
*Secretary,
Election Commission of India.*

Secretariat,
Chennai-600 009.
11th April 2019.

SATYABRATA SAHOO,
*Chief Electoral Officer and
Secretary to Government.*